



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 4, 1995

Honorable Jerry Don Evans
Uvalde County Attorney
127 North West Street
Uvalde, Texas 78801

Letter Opinion No. 95-032

Re: Whether a regular called session of a county commissioners court is valid if that regular session is convened on a Tuesday following a Monday holiday and related question (ID# 30527)

Dear Mr. Evans:

You indicate that the Uvalde County Commissioners Court's regular terms commence on the second and fourth Mondays of every month. However, following the observance of a Monday holiday, the county commissioners court convened a regular term on a Tuesday. We understand that the county commissioners court did not post notice for the Tuesday session as a special term, but it did post notice for the Tuesday meeting in accordance with the Open Meetings Act, Gov't Code ch. 551. You ask whether the session is valid.

As an introductory matter, we wish to clarify the terminology that we will be using. A commissioners court may conduct two types of "terms": a "regular term" and a "special term." 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 5.5, at 142 (Texas Practice 1989); *cf.* 21 C.J.S. *Courts* § 111, at 130-31 (1990). In general, the commissioners court conducts a regular term once each month unless a monthly term is unnecessary for completion of business and at least once each quarter. *See* BROOKS, *supra*, § 5.5, at 142; Local Gov't Code § 81.005(a); *infra* (quoting Local Gov't Code § 81.005(a)). The commissioners court may call a special term at any time. 35 BROOKS, *supra*, § 5.5, at 142-43. A "session" of the commissioners court is that period of time during which "the court is actually sitting and discharging its duties during the term, recesses included." *Id.* at 143; *cf.* 21 C.J.S., *supra*, § 111, at 130.

Section 81.005(a) of the Local Government Code is relevant to your question; it provides as follows:

At the last regular term of each fiscal year of the county, the commissioners court by order shall designate a day of the week on which the court shall convene in a regular term each month during the next fiscal year. If the completion of the court's business does not require a monthly term, the court need not hold more than one term a quarter. A regular term may continue for one week but may be adjourned earlier if the court's business is completed.

Prior to 1989, section 81.005 and its statutory predecessor, V.T.C.S. article 2348, *repealed by* Act of April 30, 1987, 70th Leg., ch. 149, § 49(1), 1987 Tex. Gen. Laws 707, 1307, required a commissioners court to "convene in a regular term on the second Monday of each month," unless the court did not require a monthly term to complete its business. Your question causes us to consider whether a commissioners court must convene on the first day of its regular term when the regular term commences on a legal holiday.¹

The legislature amended section 81.005(a) in 1989 to allow a commissioners court to choose the day of the week on which it would convene its regular term instead of requiring a court to convene on the second Monday of every month, thereby providing commissioners courts greater flexibility.² See Act of May 5, 1989, 71st Leg., ch. 601, § 1, 1989 Tex. Gen. Laws 1992, 1992; House Comm. on County Affairs, Bill Analysis, S.B. 52, 71st Leg. (1989). The proposed amendment was not in Senate Bill 52 as introduced; the Senate Committee on Intergovernmental Relations added the proposed amendment.

¹You do not ask, and we therefore do not consider, whether section 81.005(a) of the Local Government Code authorizes a county commissioners court to, at the last regular term of a fiscal year, designate different days of the week on which to begin its regular terms. Specifically, you do not ask whether, at the last regular term of a fiscal year, a county commissioners court may decide to begin its regular term on the second Monday in January, the second Tuesday in February, and so on. *But see* Hearings on S.B. 52 Before the Senate Comm. on Intergovernmental Relations, 71st Leg. (Jan. 24, 1989) (statements of Senator Barrientos and unidentified committee member) (tape available from Senate Staff Services) (indicating that committee understood amendment to Local Government Code section 81.005(a) to authorize commissioners court to meet on different day every month).

²Primarily, the legislature amended section 81.005 in 1989 in response to Attorney General Opinion JM-871 (1988), in which the attorney general considered whether the Ector County Commissioners Court might, under section 81.005, meet in the county's new administration building. At that time, section 81.005(c) required a county commissioners court to hold its regular or special term "at the county seat at the courthouse." Attorney General Opinion JM-871 at 2 (quoting Local Gov't Code § 81.005(c), *amended by* Act of May 5, 1989, 71st Leg., ch. 601, § 1, 1989 Tex. Gen. Laws 1992, 1992). The attorney general found the language of section 81.005 clearly and unambiguously to require a county commissioners court to meet in the county courthouse. *Id.* Another section of the Local Government Code expressly authorized any court required to hold its terms at the county seat, except a commissioners court, to hold its terms at court facilities other than the courthouse. *Id.* at 3 (quoting Local Gov't Code § 292.004(d)). Accordingly, the opinion concluded that the Ector County Commissioners Court must continue meeting in the county courthouse. *Id.* at 2-3.

The legislature thus amended subsection (c) of section 81.005, as well as section 292.004(d) of the Local Government Code, and added to section 81.005 subsections (d) through (f), thereby authorizing a commissioners court to select, at the first regular term of a calendar year, a new location at which it will hold its terms. See Local Gov't Code § 81.005(c), (d); Act of May 5, 1989, 71st Leg., ch. 601, §§ 1, 2, 1992, 1992-93; 35 DAVID B. BROOKS, COUNTY AND SPECIAL DISTRICT LAW § 5.5, at 67 (Texas Practice Supp. 1994). Section 81.005(f) authorizes the commissioners court, after notice, to change the location of its meeting place if such a change is "in the interest of public safety." See also 35 BROOKS, *supra*, § 5.5, at 67.

During the course of a public hearing, Senator Barrientos, who presented the committee substitute, explained that the members of some county commissioners courts prefer not to meet on Mondays. Hearings on S.B. 52 Before the Senate Comm. on Intergovernmental Relations, 71st Leg. (Jan. 24, 1989) (statement of Senator Barrientos) (tape available from Senate Staff Services). Additionally, the committee members discussed what a county should do in the event that a federal uniform holiday, see 5 U.S.C. § 6103 (listing legal public holidays for federal employees); Gov't Code § 662.003(a) (listing federal holidays state agencies observe), falls on a Monday. Hearings on S.B. 52 Before the Senate Comm. on Intergovernmental Relations, 71st Leg. (Jan. 24, 1989) (statements of Senator Barrientos and unidentified committee member) (tape available from Senate Staff Services). During their discussion, the legislators felt that the Open Meetings Act, Gov't Code ch. 551, provides a means by which a commissioners court may change the day of its regular meeting to accommodate a holiday. See *id.* (statement of Senator Barrientos); see also Gov't Code §§ 551.041, .043; *infra* (discussing Open Meeting Act's notice provisions).

The United States Supreme Court has held that, if the day fixed for the opening of a judicial term is a legal holiday, the court may convene on the succeeding day. *Gordon v. Randle*, 189 U.S. 417, 419-20 (1903); see 21 C.J.S., *supra*, § 113, at 132. The legislative history of Local Government Code section 81.005 indicates the legislature's belief that the amendments to the section allowed a commissioners court the flexibility to change the date it convened its regular term if the regular term commences on a legal holiday. See Hearings on S.B. 52 Before the Senate Comm. on Intergovernmental Relations, 71st Leg. (Jan. 24, 1989) (statements of Senator Barrientos and unidentified committee member) (tape available from Senate Staff Services).

We therefore conclude that a commissioners court need not convene on the first day of its regular term when the regular term commences on a legal holiday. In such a situation, the court may convene on the day following the holiday. Of course, the commissioners court must post notice of the meeting in accordance with the Open Meetings Act.³ See *id.* (statement of Senator Barrientos); see also Gov't Code §§ 551.041, .043; *infra* (discussing Open Meeting Act's notice provisions). Thus, the session about which you asked, which the Uvalde County Commissioners Court convened on the Tuesday succeeding a Monday holiday, is valid. Again, we emphasize that you have informed us the court notified the public of its meeting in accordance with the Open Meetings Act.

³The Open Meetings Act, Gov't Code ch. 551, requires a governmental body, including a county commissioners court, to post in a place "readily accessible to the general public" and at least 72 hours prior to the scheduled meeting time written notice of the date, hour, place, and subject of each of its regular meetings. Gov't Code §§ 551.041, .043. A county commissioners court is required to post notice of each meeting "on a bulletin board at a place convenient to the public in the county courthouse." *Id.* § 551.049.

You ask a second question: whether a county commissioners court may discuss agenda items placed on the agenda by a commissioner who is absent from the meeting. You indicate that the Uvalde County Commissioners Court, in the course of its Tuesday session that is the subject of the first question, discussed agenda items placed on the agenda by a commissioner whom the county judge knew would be absent. Moreover, the commissioners court discussed a citizen's complaint placed on the agenda regarding the absent commissioner.

Pursuant to section 81.006(a) of the Local Government Code, three members of a commissioners court constitute a quorum for the purpose of conducting all county business except the levying of a special tax. A quorum of four commissioners at a regularly scheduled meeting is necessary to levy a county tax. Local Gov't Code § 81.006(b). We assume, for purposes of this letter, that a quorum was present at the meeting about which you ask.

This office has concluded in prior opinions that any county commissioner may place items for discussion on the commissioners court's agenda. *See* Attorney General Opinions DM-228 (1993) at 3; JM-63 (1983) at 3. This office never has recognized, however, that a commissioners court must delay any discussion of items placed on the agenda by a particular commissioner to allow the commissioner to participate in the discussion. Moreover, you do not cite, and we are unaware of, any statute that requires such a delay.⁴

If a quorum of the commissioners court is present, it may transact business. *See* Attorney General Opinion V-26 (1947) at 7 (stating that it is unnecessary for commissioner to be present at meeting of commissioners court for court to conduct business, if quorum present). So long as a quorum is present, therefore, a commissioners court may discuss any item listed on its agenda. Assuming that a quorum of the Uvalde County Commissioners Court was present, we conclude that the commissioners court did not contravene any law by discussing items placed on its agenda by a commissioner who was absent from the meeting.⁵

⁴Conversely, we find nothing that would preclude a commissioners court from, as a matter of courtesy, delaying discussion of an item so that a particular member of the court may be present.

⁵While we assume that the absent commissioner was notified of the session, *see Webster v. Texas & Pacific Motor Transport Co.*, 166 S.W.2d 75, 78 (Tex. 1942), nothing in the Open Meetings Act, Government Code chapter 551, requires a governmental body to specially notify the members of its governing body of the agenda for an upcoming meeting. On the other hand, we find nothing that would prohibit such special notice.

We further assume that the commissioners court notified the public of the subjects to be discussed at the meeting in accordance with Government Code section 551.041. *See also, e.g., City of San Antonio v. Fourth Court of Appeals*, 820 S.W.2d 762, 765-66 (Tex. 1991) (discussing sufficiency of notice); *Cox Enters., Inc. v. Board of Trustees*, 706 S.W.2d 956, 959 (Tex. 1986) (same); *Texas Turnpike Auth. v. City of Fort Worth*, 554 S.W.2d 675, 676 (Tex. 1977) (same). A member of the governing body of a

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If a commissioners court's regular term commences on a legal holiday, the commissioners court does not violate section 81.005(a) of the Local Government Code by convening on the succeeding day. The court must post proper notice of the meeting in accordance with the Open Meetings Act, Government Code chapter 551.

While any county commissioner may place items for discussion on the commissioners court's agenda, a commissioners court need not delay discussion of items placed on the agenda by a particular commissioner if the commissioner is absent. So long as a quorum of the commissioners court is present, it may discuss any items on the agenda. Consequently, the Uvalde County Commissioners Court did not violate any law by discussing items placed on its agenda by a commissioner who was absent from the meeting.

Yours very truly,



Kimberly K. Oltrogge
Assistant Attorney General
Opinion Committee

(footnote continued)

governmental body, in the absence of special notice of the agenda for an upcoming meeting, may ascertain the agenda by studying the posted notice.